IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.936 OF 2005

IN

SUMMARY SUIT NO.993 OF 2003

M/s.Nanji V. Dossa & Co. ...Plaintiff

Vs.

Yogesh Dossa. ...Defendant.

Mr.D.D.Madan with Cyrus Adreshir i/b. Madekar & Co. Plaintiff.

Mr.Y.K.Sharma, for Defendant in support.

AND

NOTICE OF MOTION NO.968 OF 2005

IN

SUMMARY SUIT NO.634 OF 2003

M/s.Alka Sales Corporation. ...Plaintiff

Vs.

Kavita Y. Dossa. ...Defendant.

Mr.D.D.Madan with Cyrus Adreshir i/b. Madekar & Co.

Plaintiff.

Mr.Y.K.Sharma, for Defendant in support.

AND

NOTICE OF MOTION NO.939 OF 2005

IN

SUMMARY SUIT NO.796 OF 2003

M/s.Alka Sales Corporation. ...Plaintiff

Vs.

M/s.Galaxy Travels. ...Defendant.

Mr.D.D.Madan with Cyrus Adreshir i/b. Madekar & Co. Plaintiff.

Mr.Y.K.Sharma, for Defendant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 24th August, 2006.

P.C.:-

1. These are the notices of motion taken out by the defendant seeking dismissal of the suit under the provisions of Section 69 of the Indian Partnership Act. According to the defendant, the partnership firm who has filed this suit is not a registered firm. According to the defendant, as per the averments in the plaint there is a contract of advancing friendly loan between the plaintiff and

defendant. In the submission of the defendant therefore, as this suit has been filed by the unregistered firm for enforcement of the right arising from the contract, the suit is barred by Section 69 of the partnership Act. The plaintiff does not dispute that the plaintiff's firm is not registered under the Partnership Act. But according to the plaintiff, the transaction which is the subject matter of the suit is a contract but it was not entered into in the regular course of the business of plaintiff's firm. According to the plaintiff, the account books of the defendant shows that friendly loan was given to the defendant. The learned Counsel relies on the judgment of the Supreme Court in the case “Haldiram Bhujiawala and another Vs. Anand Kumar Deepak Kumar and another, (2000) 3 Supreme Court Cases 250”.

2. Now if in the light of these submission, the averments in the plaints are seen it becomes clear that in para 1 of the plaint in suit no.993 of 2003 the plaintiff has pleaded that the plaintiff is engaged in the business of General Insurance and in Suit no.634 of 2003 the plaintiff has pleaded that the plaintiff is engaged in the business of trading in chemicals and in Suit no.796 of 2003 the plaintiff has pleaded that the plaintiff is engaged in the business of trading and in paragraph 2 in all these suits the plaintiff states that on a request made by the defendant, the plaintiff advanced friendly loan to the defendant.

Thus, therefore, the case of the plaintiff in the plaint is clear that the contract of loan was not entered into between the plaintiff firm and the defendant during the regular course of the business of the plaintiff-firm. Sub-section (2) of Section 69 of of the Act on which the defendant relies reads as under:-

> "69. Effect of non-registration:-
>
> (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

The words "arising from a Contract" appearing in Section 69 of the Act have been interpreted by the Supreme Court in its Judgment in the Case "Haldiram Bhujiawala & another Vs. Anand Kumar Deepak Kumar and another" referred to above, as "arising out of the Contract entered into by the firm during the course of the business of the firm". Perusal of paragraph 8 of the judgment of the Supreme Court shows that point (ii) framed by the Supreme Court is relevant for the present purpose which reads as under:-

> "(ii) Whether the words "arising from a contract" in Section 69(2) refer only to a situation where an unregistered firm is enforcing a right arising from a contract entered into by the firm with the defendant

> during the course of its business or whether the bar under Section 69(2) can be extended to any contract referred to in the plaint unconnected with the defendant, as the source of title to the suit property?"

After discussing the Law in force in England as also the report of the Committee constituted, the Supreme Court in paragraph 23 has observed thus:-

> "23. The further and additional but equally important aspect which has to be made clear is that the contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with the third party defendant but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff firm with such third party defendant."

The conclusion of the Supreme Court is recorded in paragraph 24. Paragraph 24 reads as under:-

> "The real crux of the question is that the legislature, when it used the words "arising out of a contract" in Section 69(2), it is referring to a contract entered into in course of business transactions by the unregistered plaintiff firm with its defendant customers and the idea is to protect those in commerce who deal with such a partnership firm in

> business. Such third parties who deal with the partners ought to be enabled to know what the names of the partners of the firm are before they deal with them in business."

It is clear from the paragraphs 23 and 24 quoted above that when the contract on which the suit is based is entered into by the firm during the course of its business then institution of suit is barred. But if the contract entered into by the firm is not entered into during the course of the business of the firm then institution of suit is not barred by Section 69(2) of the Act. The Notices of motion are therefore, disposed of.

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